Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

REPLY COMMENTS OF ALASKA COMMUNICATIONS

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SUMMARY

The record in this proceeding is replete with concerns that the Commission has acted precipitously and over-reached with the Further Notice. The Commission may not regulate entities as common carriers in a market, nor treat a market as "non-competitive," without a record supporting such a finding. There is no record in this proceeding supporting regulation of business data service ("BDS") provided by Alaska's incumbent local exchange carriers ("ILECs") such as Alaska Communications. To the contrary, the record disproves the Commission's blanket assumption that the ILEC and only the ILEC has market power.

In threatening to regulate BDS markets that show no sign of failure, the Commission puts at risk the most promising growth sector for traditional telecommunications companies, without any concrete evidence that the public is being harmed. The Further Notice proposes sweeping new regulation but omits most of the concrete details, creating confusion concerning the potential effects on carriers. This chaotic approach puts further infrastructure investment in peril.

In the Special Access Data Collection ("SADC"), the Commission failed to gather critical market data from a number of BDS providers, including the largest provider in the Alaska market – General Communication, Inc. ("GCI"). The Commission cannot fulfill its stated intention to evaluate BDS on a "technology-neutral" basis with grossly inaccurate data from Alaska's competitors. There simply is insufficient record evidence for the Commission to impose any new BDS regulations on Alaska's price cap ILECs.

In many locations, including in Anchorage, Fairbanks and Juneau as well as in Alaska's non-Bush rural markets, BDS and related services have evolved for the most part outside the regulated sphere, and produced robust innovation and competition, with varied services offered

on competitive terms. In these areas, large cable companies compete with midsize or small ILECs for virtually every customer contract, often augmented by competition from national service providers and niche competitors.

In the isolated markets of the Alaskan Bush, where competition has yet to take hold, the culprit is the lack of adequate middle-mile infrastructure linking the local market to other locations and other networks. Either no terrestrial middle-mile facilities have been constructed, and communities are connected only via limited-capability satellite service, or they are connected (such as in southwest Alaska) to monopoly-controlled facilities that provide inadequate broadband capability at above-market prices. In those isolated locations, the Commission should impose regulation on the entity that controls the middle-mile bottleneck, which also is the largest service provider in the state – GCI – not the ILECs that are at pains to compete with the scale and scope of GCI's resources.

The record compiled in this proceeding bears out these problems. The portrait painted by the information gathered in the SADC is incomplete and thus misleading; it fails to capture the BDS capability of GCI and other competitive operators in Alaska. Commenters who allege that all ILECs possess market power fail to back up their claims with market-specific evidence. Indeed, Verizon's comments contradict those it filed just a few years ago, attesting to the highly competitive nature of the enterprise broadband market. Commenters in this proceeding present a very different picture of the BDS market from that presented in the Further Notice, suggesting the Commission has no foundation to regulate ILEC BDS and at the same time ignore the impact of non-ILEC monopolists with a significant market presence.

The Commission should consider the evolution of the BDS market in Alaska an overall success, with limited need for intervention in the middle-mile market serving the Bush. Alaska

communities for the most part enjoy a variety of choices available on competitive rates, terms and conditions and only one significant barrier to entry: the lack of middle-mile connectivity to remote communities. The Commission should tailor its rules accordingly and regulate only where market conditions truly support such intervention.

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REPLY COMMENTS OF ALASKA COMMUNICATIONS

Alaska Communications[1] hereby replies to the comments filed in response to the Commission's proposal to regulate business data services ("BDS") (the "Further Notice").[2]

I. The Record Offers No Support For Regulating ILEC BDS In Alaska

No commenter has suggested that any market in Alaska lacks competition for BDS, except for the comments of Alaska Communications observing that the lack of middle-mile infrastructure *in the Bush* presents a unique bottleneck that the Commission should address.[3] Beyond that, there is an inadequate record for any new regulation. In particular, there is no evidence that any incumbent local exchange carrier ("ILEC") possesses market power for BDS in Alaska. Significantly, the data collected by the Commission in the Special Access Data

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1 "Alaska Communications" as used herein signifies the following subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC; ACS of Anchorage, LLC; ACS of Fairbanks, LLC; and ACS of the Northland, LLC; ACS Internet, LLC; ACS Long-Distance, LLC; and ACS Cable Systems, LLC (an undersea cable operator).

2 *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016) (the "Further Notice").

3 Comments of Alaska Communications, WC Docket Nos. 16-143, 05-25, RM-10593, at 2-3 (filed June 28, 2016) ("Alaska Communications Comments").

Collection ("SADC") mispresent the BDS market by failing to capture the extensive BDS operations of Alaska's dominant competitor, the cable operator, General Communication, Inc. ("GCI"), as well as a variety of additional market entrants from national provider AT&T to smaller, niche competitors.

A. Alaska Special Access Data Compiled By the Commission Are Insufficient To Form A Basis For Regulation

No record exists for imposing new regulation on BDS offered by Alaska's price cap ILEC. Most BDS offerings never were provided on a common carrier basis (as discussed in greater detail in Section B., below). Even those that have been offered under tariff are highly competitive (in all areas but the Bush, as discussed in Section II., below), and therefore do not provide cause to subject the ILEC to new price regulation. The market information gathered by the Commission in the special access data collection ("SADC") fails to accurately reflect the extent of competition for BDS by the state's dominant telecommunications and broadband provider, GCI. Not only is GCI's BDS business undercounted but other providers in the state do not appear to be represented at all in the data. In short, the data in the record is unreliable and provides no evidence of ILEC control of any bottleneck facility. To the extent the Commission wants to impose regulation on Alaska's price cap ILEC, it must gather a more comprehensive and realistic factual record.[4]

[4] A supporting statement from David C. Blessing, principal of Parrish, Blessing & Associates, Inc. retained by Alaska Communications, is provided as Attachment A to these Reply Comments (the "Blessing Declaration"). Mr. Blessing concurs that the Commission need only compare publicly available information to the data collected in the SADC to conclude that the latter fails to provide any accurate picture of the Alaska BDS market. Blessing Declaration ¶¶5-6.

1. *The SADC Does Not Accurately Capture GCI's BDS Revenue and Circuit Information*

The SADC purported to survey all of the providers and purchasers of TDM-based, packet-based and "best efforts" broadband business services, regardless of technology.[5] However, for Alaska, the Commission does not possess a representative data set nor a sound basis for adopting new regulations. In particular, GCI, the state's self-avowed "largest broadband provider,"[6] has not accurately reported its BDS capability in the special access information collection.[7] GCI asserts that it is "the market leader in the Metro Fiber space" in Alaska,[8] as well as the largest provider of "integrated business services," with 75 percent of Alaska's largest 250 companies among its customers.[9] However, the numbers contained in the Commission's data set from the SADC fail to reflect GCI's dominant status in the business services space.[10] The following are just some of the examples of the basic information the SADC fails to accurately capture, or information in the SADC that is directly contradicted in public sources:

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5 *See* Further Notice ¶29, citing *Data Collection Order*, WC Docket No. 05-25, RM-10593, Order & Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16360 (2012) (hereinafter, "Data Collection Order").

6 *See* http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-irhome (visited June 24, 2016).

7 GCI is "the largest Alaska-based communications provider as measured by revenues." *See* https://www.gci.com/business/services/networks/network-design (visited June 24, 2016). Moreover, GCI's communications network has "the broadest reach of any network in the state." GCI Presentation, Peter Pounds, SVP and CFO, "Deutsche Bank Leveraged Finance Conference" (Sept. 2015), at 12, *available at:* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NTk3NTU0fENoaWxkSUQ9MzA3NjcwfFR5cGU9MQ==&t=1 (visited June 24, 2016) ("GCI Leveraged Finance Presentation"). *See also* Alaska Communications Comments, Attachment, Declaration of David C. Eisenberg at 3 ("Eisenberg Declaration").

8 GCI Leveraged Finance Presentation at 12.

9 GCI, "City and Borough of Juneau Proposal for Wireless Service," Oct. 8, 2014, at 1.

10 General Communication, Inc., Annual Report (Form 10-K) at 36 (Mar. 26, 2014) ("GCI 2013 Form 10-K").

- GCI's representations to investors that it is the market leader in the metro fiber sector, and its claims to have a substantial majority of Alaska's largest enterprise customers and the largest network in the state,[11] are strikingly inconsistent with GCI's SADC submission, in which it claims to serve only a small fraction of the locations that were reported by Alaska Communications.

- GCI's Form 10-K Annual Report to the U.S. Securities and Exchange Commission ("SEC") for 2013 reported roughly $154 million in data revenue from "Business Services," and a further $96 million in "Managed Broadband" data service, for a total of $250 million, which is orders of magnitude higher than the business data service revenues it reported to the FCC in the SADC.[12]

- GCI's Form 10-K Annual Report for 2015 shows some $142 million in data revenue from "Business Services" and a further $127 million in "Managed Broadband" data service, for a total over $269 million, which is roughly triple Alaska Communications' $90 million in BDS revenues for the same period.[13]

- The SADC data fails to reflect GCI's Ethernet-capable head-ends, despite the fact that GCI has been advertising Ethernet services and winning competitive bids for BDS since at least 2013, including in rural and remote communities in Alaska.[14]

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[11] *See, e.g.,* Blessing Declaration ¶10.

[12] General Communication, Inc., Annual Report (Form 10-K) at 36 (Mar. 26, 2014) ("GCI 2013 Form 10-K").

[13] Blessing Declaration ¶10 (citing ACS and GCI respective SEC forms 10-K for 2015).

[14] GCI 2013 Form 10-K at 10 ("[w]e also provide metro-Ethernet fiber optic and dedicated access Internet products primarily for our business services customers"); GCI, "A Proposal for Ilanka Community Health Center in Response to a Request for Telecommunications & Internet Services," July 5, 2013, at 6 ("The network will have an Ethernet demarcation point on the clinic LAN from an on-site GCI router . . . The connection follows a path from the clinic to the GCI Cordova Point-of-Presence, then the GCI fiber network for transit to Anchorage and the ConnectMD core . . . . GCI engineering will work with the clinic's staff to determine priority applications, such as videoconferencing or business critical applications, and provider the proper Quality of Service (QoS) on the network.").

Another GCI competitive bid from 2015 describes GCI's extensive Ethernet network which certainly was not built from scratch after 2013. *See* GCI, "Response to University of Alaska Fairbanks Request for Proposal 16P0001SAS System-Wide Telecommunications Services Request for Best and Final Offer," Technical Offer at 10 (Dec. 8, 2015) ("We are uniquely positioned to leverage facilities that we directly own and operate including over 7,000 miles of fiber optics, 5,000 miles of metallic facilities, satellite networks, microwave towers and fixed wireless to deliver a unified Carrier Ethernet service. The Carrier Ethernet Services Delivery Network (CESDN) extends high performance MEF-compliant Ethernet services from access to core providing UA carrier grade end-to-end SLA performance. Our common

- For DS1, DS3 and other circuit-based BDS, the SADC fails to register the impact of DOCSIS-based competition from cable companies such as GCI because revenues from DOCSIS business Internet access sales is not included in the data.[15]

- While GCI reported to the Commission fewer BDS circuits and lower revenues than those of the ILEC across all end-user and "provider" (wholesale) market segments, in SEC filings GCI reported *three times* the revenue that the ILEC reported from BDS-type services.[16]

- USAC data confirm that non-voice telecommunications support is awarded to GCI in far greater amounts than to Alaska Communications or other carriers, even in areas where Alaska Communications is the ILEC.[17]

- FCC Form 477 data shows that GCI can reach many times more census blocks than ACS with data speeds exceeding 50 Mbps.[18]

David Blessing, an economist retained by Alaska Communications to evaluate Alaska's markets, indicates that one likely reason the SADC data fails to capture the true extent of GCI's BDS operations is that BDS often is a component of larger contracts for "managed data services," and GCI has the lion's share of the latter in Alaska.[19] Thus, SADC's focus on standalone BDS contracts, and failure to capture managed services contracts commonly

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network equipment approach provides a service activation and management platform that enables end-to-end performance monitoring, end-to-end fault management and isolation, improved service provisioning velocity, and advanced operations, administration and maintenance functionalities. Core to the CESDN is the ability to flexibly classify ingress traffic based on multiple parameters and map them to one or more services with guaranteed SLAs. Mapping types include but are not limited to physical port, L2 802.1p Bit, L3 DSCP Class, and MPLS EXP Bit. Service level agreements are enforced end-to-end with advanced traffic management attributes that precisely define network protection, network prioritization and bandwidth requirements, allowing flexible configurations that meet the University of Alaska's performance objectives").

[15] Further Notice n. 718.

[16] Blessing Declaration ¶¶ 10-12.

[17] Blessing Declaration ¶¶ 17-23.

[18] Blessing Declaration ¶ 11.

[19] Blessing Declaration ¶ 13.

employed with custom BDS arrangements, skew the representation of the BDS market. Alaska Communications also believes that SADC data should be compared to information submitted to USAC and the Commission, such as in rural health care and E-rate funding requests and in FCC form 477.

Whatever the cause of its failings, the SADC results do not provide a sufficient basis for the Commission to draw any conclusions about the Alaska BDS market. The information contained in the data set for Alaska is incomplete, at a minimum, and not a reliable justification for any new regulation in Alaska BDS. Moreover, as a matter of administrative procedure, the Commission may not ignore readily available information from public sources that contradicts the SADC data to such an extent as to suggest that the SADC data is a fiction.[20]

As for next steps, the Commission should conduct a more comprehensive investigation into GCI's actual BDS offerings and planned offerings. The Commission should review GCI's public statements to investors as well as its responses to requests for proposals ("RFPs") to verify that GCI is consistently reporting the capability and scope of its network infrastructure.[21] The Commission should analyze all types of business services contracts, including managed data services contracts, "best efforts" contracts, as well as contracts with rural health care providers, E-rate customers, and other enterprise customers. The Commission should research the sources

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[20] *See, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009) (courts may "set aside agency action under the Administrative Procedure Act because of failure to adduce empirical data that can readily be obtained"); *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29, 52 (1983) ("The agency must explain the evidence which is available, and must offer a 'rational connection between the facts found and the choice made.'"), *quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

[21] As discussed below, GCI consistently represents to investors that it is the largest provider of broadband services – and not only residential broadband services but also BDS – in the state. *See, e.g.,* Blessing Declaration ¶ 10.

discussed by Mr. Blessing indicating that any market power that exists in Alaska is in the hands of GCI. To date, the record in this proceeding does not reflect the facts as Alaska Communications knows them, facts that easily can be verified through diverse sources.

2. Some Market Participants Are Entirely Missing From the Data

Another reason the SADC provides an unreliable snapshot of BDS competition in Alaska is that it exempted from the data collection many smaller market participants, such as purchasers of less than $5 million in dedicated services in 2013, and "best efforts" service providers that had fewer than 15,000 customers and fewer than 1,500 business broadband customers as of December 31, 2012.[22]

GCI and Alaska Communications are not the only BDS providers in Alaska. Competition at both the wholesale and retail levels takes a number of other forms, including enterprise customers that self-provide, such as the U.S. Department of Defense as well as private businesses, national service providers with a facilities-based presence in Alaska, such as AT&T and Verizon Wireless, and regional providers of BDS.[23] These providers appear to be entirely unrepresented in the data.

Particularly in the Bush, where GCI operates as an unregulated monopolist with respect to long-haul terrestrial transport services necessary for connections to the Internet and any other location, customers self-provisioning BDS represent an important alternative to traditional service providers.

Alaska is a huge state, geographically, but contains mostly very small communities. Excluding smaller market participants likely resulted in substantial BDS competition going

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[22] Further Notice ¶40, citing Data Collection Order ¶¶20-22. *See also* Blessing Declaration ¶ 13.

[23] *See* Alaska Communications Comments at 2-3.

unreported. Moreover, the information that has been gathered for Alaska is not sufficient to justify any conclusion about the ILEC having market power. In fact, the publicly available data discussed in Mr. Blessing's declaration support the conclusion that the ILEC, in fact, has no market power in the BDS sector.

The record in this proceeding does not support a Commission conclusion that BDS regulation is needed in Alaska. Quite simply, the information contained in the SADC data set for Alaska is incomplete and inaccurate and therefore cannot form the basis for a rational decision to regulate the market for BDS in Alaska. And the evidence provided by Alaska Communications in its comments and these reply comments tells a compelling story that it is not the ILEC that needs regulating. If the Commission takes any action affecting the Alaska market, it should be to gather more comprehensive information on the monopolization of the middle mile market, discussed in Section II below, while refraining from imposing regulation where it is not justified.

B. Most BDS In Alaska Is Not Offered On A Common Carrier Basis

Another question the Commission must consider before imposing common carrier regulation on BDS is whether customers perceive the service as a common carrier offering. In Alaska, they do not. Verizon, which has wireless operations in Alaska, incorrectly states that cable and "everyone else in the industry" categorically offer such services as "common carriage."[24] In fact, many customers in Alaska negotiate non-common carrier service packages that include BDS – and both the ILEC and the cable operator offer such packages, with the cable operator being the largest service provider in the state, as discussed in more detail below. While Verizon is correct in stating that providing a service under negotiated terms does not

[24] Letter from Curtis L. Groves, Verizon, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143 *et al*. (filed Aug. 5, 2016).

"automatically change a common-carriage service into private carriage,"[25] the law makes clear that the FCC may not regulate as common carriage a service that is neither offered that way nor compelled, for regulatory reasons, to be offered on a common carrier basis.

First, BDS is not being held out to the public on standardized terms. The Further Notice targets sophisticated, high-speed business services offered by Alaska Communications, GCI and others, with negotiated service level guarantees tailored to individual customer demands. These are not telecommunications services. Such services by definition are customized in all aspects, and offered on a private, contractual basis, at least in Alaska. As such, they should may not be regulated as telecommunications services without clear regulatory compulsion.[26]

In exercising its authority under the Communications Act to regulated common carriers (telecommunications carriers) and telecommunications services, the Commission has distinguished between "telecommunications offered for a fee directly to the public" (common carriage) and services individually negotiated with each customer (private).[27] The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this critical distinction, noting that the "primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently."[28] The Act's requirement that services be offered "directly to the public" in order to be deemed common carriage has been affirmed by the

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[25] *Id.*

[26] *Accord* Comments of Comcast Corporation, WC Docket Nos. 16-143 *et al*., pp. 15-16 (filed June 28, 2016) (BDS is a non-common carrier service offered to enterprise customers that negotiate individual terms; as such, BDS may not be subject to rate regulation except in the case of market failure) (hereinafter "Comcast Comments").

[27] *See* 47 U.S.C. §153(53).

[28] *National Ass'n of Regulatory Util. Comm'rs v. FCC,* 533 F.2d 601, 608-09 (D.C. Cir. 1976). *See also National Ass'n of Regulatory Util. Comm'rs v. FCC,* 525 F.2d 630 (D.C. Cir.), *cert. denied,* 425 U.S. 992 (1976).

U.S. Supreme Court.[29] Most recently, in upholding the FCC's reclassification of non-enterprise, retail broadband Internet access service as a telecommunications service, the court of appeals relied heavily on the FCC's representation that customers perceive the service as a "utility" or common carriage.[30]

No such customer perception surrounds BDS as defined by the Commission. Customers in Alaska enter into arrangements for BDS exclusively on a negotiated basis. There are no tariffs or standard terms of service, nor could there be because by their very nature such services must be tailored to the individual customer.[31] Service level guarantees, prices, locations, contract term and termination rights, and other key provisions all are individually crafted between each customer and the service provider.[32] Frequently, BDS contracts result from extended RFPs and competitive bidding processes. The diverse service bundles found in the market today reflect the differences among individual customers and their business data transmission requirements, as well as effort by competing carriers to differentiate their offerings. Unlike traditional circuit-based services, BDS are not "one-size-fits-all" products. As a result, customers clearly do not perceive BDS as a "utility" or standardized offering.[33]

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29 *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 977 (2005).

30 *United States Telecomm. Ass'n v. FCC,* Case No. 15-1063 slip op. at 24, 45 (D.C. Cir. June 4, 2016).

31 *See, e.g.,* Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143 *et al*. (filed August 2, 2016) (FCC's proposed regulatory framework "does not reflect how carriers negotiate for broadband data services") ("CenturyLink August 2 Letter").

32 Alaska Communications Comments, Att. A, Declaration of David C. Eisenberg ("Eisenberg Declaration") at 2; Comcast Comments at 15-17.

33 *Accord,* Comcast Comments at 16 ("Comcast does not hold itself out indifferently to the public or any class of customers to provide E-Access services upon request").

The Commission's authority to impose common carrier regulation on BDS is severely circumscribed by the customized, private contractual arrangements that define the service. The premise in the Further Notice that such services "are telecommunications services" and therefore anyone providing them "are common carriers" is entirely without foundation. The Commission has not required such services to be tariffed by ILECs or otherwise brought under the strictures of Title II of the Communications Act before now. It may not change its approach without a valid justification.[34] As discussed above, Alaska Communications faces intense competition and pricing pressure in the provision of these services. There is no regulatory compulsion for common carrier regulation. The facts here do not support any such change.

II. If the Commission Regulates BDS In Alaska, It Should Confine Regulation To the Bush, Where A Middle Mile Bottleneck Is Stifling Competition

The Commission has no authority to regulate rates or other terms of BDS in the absence of any evidence that some entity is exercising market power or holding itself out as a common carrier. The Commission consistently has acknowledged that it is justified in regulating prices and other terms of service in markets only in the case of market failure, where an entity possesses market power (or is dominant, in FCC parlance); otherwise the default is to rely on market forces.[35] Indeed, as noted by former FCC Chief Economist Joe Farrell, attempts to

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[34] While the Commission may change its approach, it may do so only after articulating a "rational connection between the facts found and the choices made." *United States Telecomm. Ass'n v. FCC, supra,* slip op. at 42, *citing Verizon v. FCC*, 740 F. 3d 623, 643-44 (D.C. Cir. 2014).

[35] *See, e.g., Orloff v. Vodafone Airtouch Licenses LLC, d/b/a Verizon Wireless,* Memorandum Opinion and Order, 17 FCC Rcd 8987, ¶ 22 n.69 (2002) (in the absence of market failure, the Commission generally relies on market forces rather than regulation), *aff'd, Orloff v. FCC*, 352 F.3d 415, 420 (D.C. Cir. 2003); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, ¶ 173 (1994) ("[I]n a competitive market, market forces are generally sufficient to ensure the lawfulness of . . . terms and conditions of service by carriers who lack

regulate rates in a highly competitive market such as BDS, with its varied and customized services competing with one another, would be extremely inefficient, and more likely to deter rather than stimulate market entry and facilities investment.[36]

The proposed BDS regulations appear to be premised on the false assumption that all ILECs possess an inherent advantage in the BDS market through their "ubiquitous presence" that enables them to furnish BDS on request throughout their territories – an ability, according to the Commission, that "no other competitor can duplicate."[37] In Alaska, this certainly is not the case. As discussed below, BDS is largely provided on a non-common carrier basis by a variety of competitors in Alaska. It is incumbent upon the Commission, lest it discourage investment and market entry, to avoid overly broad regulation, and focus on those segments of the market where regulation is needed because an entity is exercising market power, inhibiting growth of competitive BDS.

Indeed, just last month, the Commission found that ILECs as a class are non-dominant nationwide in their provision of switched access service because, "the overall importance of interstate switched access has continued to decline as consumers have discarded their switched access lines in favor of more advanced technologies. In today's marketplace, incumbent LECs cannot control prices for, and thus lack market power over, interstate switched access."[38] Special access customers are similarly discarding legacy TDM-based special access services in favor of

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market power").

[36] Comcast Comments, Ex. A, Declaration of Joseph Farrell, pp. 19, 30. *See also* CenturyLink August 2 Letter at 2.

[37] Further Notice para. 2.

[38] *Technology Transitions*, GN Docket No. 13-5, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, FCC 16-90 (rel. July 15, 2016), at ¶ 22.

more advanced technologies, including Ethernet and other packet-based services that no longer require direct point-to-point connections. These advances have lowered entry barriers for BDS, including special access services – which have long been considered more susceptible to competitive entry than switched access.[39] These marketplace developments call into further question the need for new BDS regulation.

Alaska already enjoys some of the most intense telecommunications competition in the nation in its most densely populated areas – Anchorage Fairbanks and Juneau – and also is very competitive in rural areas that are linked to those population centers by the state's road system. Where the market already is competitive, and no entity possesses market power, as in Alaska's non-Bush areas, imposing rate regulation would only create barriers to entry, and discourage network investment, contrary to the public interest.[40]

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[39] *See, e.g., Competition in the Local Exchange Telephone Service Market*, NTIA Report No. 87-210 (Feb. 1987), at 5-6 ("[B]ecause dedicated access to a long distance carrier involves only the provision of a nonswitched facility between two points, it can often be provided at a relatively small cost. As a result, RHC [Regional Bell Holding Company] access services to customers with a high volume of long distance calling may be highly susceptible to competitive provisioning . . . . As with access services, a customer may be able to replace RHC-provided point-to-point private lines at relatively low cost with customer-owned facilities or facilities obtained from a non-RHC supplier. Accordingly, the RHCs' point-to-point private line services may be similarly susceptible to competitive provisioning . . . . Multipoint-to-multipoint services are switched offerings that give customers access to other customers connected to a particular network. The basic local exchange services that form the core of the RHCs' businesses are the most familiar example of multipoint-to-multipoint services . . . . Because provision of multipoint-to-multipoint services involves an extensive network of facilities and a large investment in switching equipment, they are the most difficult RHC services to replicate. Accordingly, they may be the least susceptible to competitive entry").

[40] *See, e.g.,* Comcast Comments at 40-42 (regulating rates of market participants that lack market power will likely lead to their cutting capital investment in broadband, citing Chairman Wheeler's previous pledge *not* to regulate rates or require unbundling for broadband services or facilities in order to preserve incentives for network investment).

In Alaska Communications' price cap territory, Anchorage, Fairbanks and Juneau have the highest demand for BDS, and competition is robust in those areas. Indeed, 66 percent of the DS1 and DS3 channel terminations provided by Alaska Communications under its interstate tariff are provided in these three areas.[41] GCI competes on equal (or better) footing with Alaska Communications for the BDS business in the state, with extensive facilities of its own and a statewide customer base.[42] Indeed, Mr. Blessing concludes that it is GCI, not Alaska Communications, that is the larger provider of BDS services, as well as other complex services that rely on BDS, both in the price cap ILEC service territory and in other parts of the state.[43] In recent years, not only Alaska Communications and GCI but also AT&T and other competitors regularly bid for BDS contracts.[44] There can be no doubt that competition is well established in these population centers in Alaska.

In on-road communities outside the three largest population centers, competitive BDS market entry also is relatively easy. In areas such as the Kenai Peninsula, there is less demand

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[41] Alaska Communications, FCC Tariff No. 1, Transmittal Letter No. 47, July 1, 2016 Annual Access Charge Tariff Filings, WC Docket No. 16-71, Supporting Documents: "ACS Rate Detail" (filed June 16, 2016) (showing demand for Special Access High Capacity Channel Termination 1.544 mbps (Line 4571) and Special Access High Capacity Channel Termination 44.736 mbps (Line 4771) for each of the six ILEC study areas served by Alaska Communications).

[42] *See, e.g.,* Blessing Declaration ¶ 5 (the ILEC in Alaska is not the dominant player in the BDS market); *id.* ¶¶ 10-11 (demonstrating GCI's larger share of the BDS market as documented in GCI's statements to the FCC, to investors and to the U.S. Securities & Exchange Commission ("SEC")).

[43] *See, e.g.,* Blessing Declaration ¶11 (noting that GCI has reported to the FCC it can provide broadband services at up to 50 Mbps in almost *60 times* more census blocks than Alaska Communications).

[44] *See* Eisenberg Declaration, *supra* note 32. In disclosure to its shareholders, GCI has observed that its prices for BDS-type offerings have been subject to downward competitive pressure or "price compression." Blessing Declaration ¶11.

than in the three largest communities but two or more providers still are actively competing for BDS customers.[45] The Commission has no basis to conclude that ILEC BDS services should be regulated in these areas.

Monopoly power requires more than merely some degree of market power – it also requires durability – that is, the ability to raise prices or prevent competitive entry over a sustained period of time.[46] Two facilities-based providers, with the potential for additional entry, often are sufficient for a market to be considered competitive – if one provider raises rates, over time customers will migrate to the other competitor. While some may argue that three or four service providers are necessary for effective competition in the business market, the Commission has found to the contrary in Alaska, granting substantial deregulation a number of years ago based just on the vigorous competition between ACS and GCI.[47]

As shown in the following table, USAC data confirm that in high-cost rural areas on the road system, no single entity wins more than 45 percent of the federal support awarded in

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[45] Blessing Declaration ¶6.

[46] *See, e.g., Eastman Kodak Co. v. Image Technical Servs., Inc.,* 504 U.S. 451, 481 (1992). *See also* Colo. Interstate Gas Co. v. Natural Gas Pipeline Co. of Am., 885 F.2d 683, 69596 (10th Cir. 1989). *See generally* William M. Landes & Richard A. Posner, *Market Power in Antitrust Cases*, 94 Harv. L. Rev. 937 (1981).

[47] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act,* WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149 (rel. Aug. 20, 2007) (based on findings regarding the size and scope of GCI's facilities throughout much of the Anchorage study area, as well as GCI's market share, ACS of Anchorage granted forbearance from aspects of dominant carrier regulation in its provision of enterprise broadband services, as well as mass market broadband Internet access and switched access services). *See also Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act,* WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1982 (2007) (subsequent history omitted) (noting that GCI already had "market leading broadband facilities" a decade ago).

connection with enterprise broadband services provided to schools, libraries and rural health care ("RHC") providers.[48]

RHC and E-Rate 2015 Broadband Support Distribution: State of Alaska

Provider	Total AK RHC + E-rate (voice excl.)	RHC + E-rate (voice excl.) – On-Road only	RHC + E-rate (voice excl.) – Off-Road only
GCI (including ILEC affiliates)	76.07%	26.15%	84.81%
Alaska Communications (price cap ILEC)	9.19%	42.86%	3.30%
Others	14.73%	31.00%	11.89%
Total	100.00%	100.00%	100.00%

In the Bush, however, the situation is markedly different from the rest of Alaska. GCI holds a clearly dominant position in serving the Bush, including in the 49 Bush communities served by Alaska Communications, due to its middle mile monopoly. In fact, GCI receives an 85 percent share of the total rural health care ("RHC") and E-rate support flowing to Bush communities.

In total, GCI received E-rate and rural health care funding commitments of some $126 million for 2015, roughly eight times that of Alaska Communications. This is a particularly telling statistic because, in the Alaska Bush, schools, libraries, and rural health care providers represent a substantial portion – in many places, a majority – of the potential market for BDS.

Even limiting the analysis to the price cap ILEC service areas of Alaska Communications yields similar results where GCI dominates the Bush market due to its middle mile monopoly:[49]

[48] Blessing Declaration ¶18.

[49] *Id.* ¶19.

RHC and E-Rate 2015 Support Distribution:
Alaska Communications ILEC Serving Areas

Provider	RHC/Erate (voice excl.) - Alaska Communications ILEC Svc Area	RHC/Erate (voice excl.) - Alaska Communications ILEC Svc Area – On-Road Only	RHC/Erate (voice excl.) - Alaska Communications ILEC Svc Area – Off-Road Only
GCI (incl. ILEC affiliates)	46.40%	27.92%	68.06%
Alaska Communications	31.82%	45.33%	15.98%
Others	21.78%	26.75%	15.96%
Total	100.00%	100.00%	100.00%

In Bush communities served by GCI's publicly-funded monopoly middle-mile transport network, "TERRA," GCI received 90 percent of the 2015 E-rate and rural health care support committed by USAC, including a full 100 percent share – every last support dollar – committed in communities served by Alaska Communications.[50]

Procurement data from the federal General Services Administration and the State of Alaska tell a similar story. From 2014-2016, GCI won over half of the total contract value awarded by the GSA for BDS and related services: roughly $1.2 million out of a total of $2.1 million, compared to $0.3 million for Alaska Communications.[51] Within the price cap local exchange service area of Alaska Communications, the disparity is even more stark: GCI won some $1.1 million out of a total of $1.6 million in total contract value awarded – a 66 percent share – while Alaska Communications won only $0.3 million, roughly a 15 percent share.[52]

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[50] Blessing Declaration ¶22.

[51] Blessing Declaration ¶25.

[52] *Id.*

With respect to the State of Alaska, GCI again comes out far ahead. In the first six months of 2016, GCI received over $2 million, out of a total of $4.1 million, of the state's expenditures on BDS and related services, while Alaska Communications received only $0.7 million.[53]

Carriers such as Verizon that allege that all ILECs possess market power in the BDS sector have failed to make the affirmative case justifying regulation. Indeed, just a few years ago Verizon testified to the highly competitive nature of the enterprise broadband market, arguing that no provider could be deemed "dominant" in this market, and opposing ILEC regulation.[54] Similarly, Sprint's assertion that all ILEC BDS rates should be slashed from current levels is not supported by data, but is simply another refrain in Sprint's decade-long pitch to cut wireless carriers' own costs at the expense of those who deploy and operate wireline broadband networks.[55]

In fact, BDS providers in Alaska are competing head-to-head on price to the point where the competition is affecting the bottom line.[56] In recent calls with investors, GCI management has disclosed the price impact that competition in the BDS market has been having – discussing

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53 *Id.* ¶24.

54 Comments of Verizon in WC Docket No. 11-188, p. 10 *et seq*. (filed Dec. 20, 2011) ("Verizon 2011 Comments").

55 *See, e.g.,* Verizon 2011 Comments at 15 (observing that Sprint has benefitted financially from significant price competition in the enterprise broadband services market, and citing Sprint reports touting extensive choice in the wireless backhaul market).

56 *See* General Communication, Inc., Annual Report (Form 10-K) at 15, 34-36 (Mar. 3, 2016) ("GCI 2015 Form 10-K").

the competitive nature of the contracting process, the constraint on pricing, and the churn in the marketplace.[57]

Sprint and Windstream also grossly generalize when they argue that entire classes of service – for example, fiber-based services above 50 Mbps or TDM-based services at or below 50 Mbps – should be deemed categorically non-competitive.[58] This is simply not accurate in Alaska.

Alaska Communications takes issues with the implication that *any* entity in Alaska could be considered "dominant" (possess market power) in the market for services above or below 50 Mbps, with the exception of isolated Bush communities, as discussed below. As GCI has observed, because of robust competition, business customers in *rural* Alaska are receiving broadband services that are reasonably comparable to those available in the Lower 48 states.[59]

However, a very different environment exists in Bush Alaska.

In the Bush, customers are not on any road system, electrical grid, or fiber optic cable network linking their locations to any other communications facilities. Alaska Communications has extensively studied the problem of serving Alaska's Bush locations. The principal problem is the absence of infrastructure, particularly middle-mile telecommunications facilities, linking

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[57] *See* Blessing Declaration ¶11 (citing John Lowber, GCI Earnings Report, 1st Quarter 2013).

[58] Comments of Windstream in WC Docket No. 16-143 (filed June 28, 2016) at 15 (the record establishes a lack of competition for fiber-based services above 50 Mbps); Comments of Sprint in WC Docket No. 16-143 (filed June 28, 2016) at 15 (all TDM-based services at or below 50 Mbps should be presumed to be non-competitive).

[59] Letter from Tina Pidgeon, GCI, to Marlene H. Dortch, Secretary, WC Docket No. 10-90 *et al.*, Presentation, "GCI: Transforming Alaskan Communications Through Competition," at 1 (filed April 30, 2010).

these locations and other communities and access points;[60] or where such infrastructure exists, appropriate rules to ensure non-discriminatory service over that infrastructure are not enforced. The cost to deploy, maintain and operate advanced middle mile facilities in the Bush is sufficiently high that it generally has precluded commercial deployment except with the aid of government subsidies.

Without access to sufficient, affordable middle-mile infrastructure, service at the end-user level remains inadequate, and market entry is prohibitively expensive.[61] Indeed, examining publicly available data by location, there is a wide gap between locations on the road system and those that are off the road system, both in competitive presence and in the availability of high-capacity services.[62] In Bush Alaska, it is the ILEC that lacks access to middle mile facilities (with the exception of the ILEC affiliated with GCI), and it is the ILEC that has no ability to deploy BDS as a result.[63]

Thus, the Further Notice errs, at least as far as it concerns Alaska, in positing that the ILEC possesses market power. As Mr. Blessing testifies, in both urban and rural Alaskan communities on the road system, where it is common for two carriers to offer terrestrial middle

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60 *See, e.g.,* Blessing Declaration ¶ 6 (domination in the Alaska BDS market comes not with control of the customer connection but rather with control of middle mile facilities").

61 Blessing Declaration ¶ 6.

62 Blessing Declaration ¶ 23 (in Bush communities within Alaska Communications' ILEC territory, GCI receives more than two-thirds of the E-rate and RHC support); *id.* ¶18 (in Bush communities in the state as a whole, GCI receives nearly 85 percent of the E-rate and RHC support); *id.* ¶22 (in areas served by GCI's TERRA middle-mile network, GCI receives more than 90 percent of the E-rate and RHC support).

63 Blessing Declaration ¶¶ 8-9. Mr. Blessing also explains the correlation between access to middle mile capacity and the ability to win significant BDS contracts, such as from rural health care ("RHC") facilities operators, E-rate customers, and government agencies. *Id.* ¶¶18-26.

mile capacity in competition with each other, the BDS market is competitive, with no dominant party. "For those off the road system the level of competition declines dramatically and a single provider is clearly dominant."[64] That provider most often is not the ILEC but GCI.[65]

While the overall revenue potential in the Bush may be relatively small, Alaska Communications has a long history of serving the Bush, with 49 remote Bush communities within its price cap ILEC service footprint. The reason that carriers such as Alaska Communications have such great difficulty offering BDS or other advanced services to the Bush is the lack of adequate, affordable middle mile infrastructure connecting the Bush to Anchorage, the Internet, and the outside world. Simply put, shere competitive middle mile infrastructure is available, BDS prices are lower than in areas without access to competitive middle mile networks.[66]

In most of the Bush communities served by Alaska Communications, no terrestrial-based middle-mile infrastructure has been deployed. In four of the 49 Bush communities where Alaska Communications is the ILEC, limited fiber-based middle-mile capability has been deployed, but *the only entity providing services above the DS1 level to those communities today is GCI.*

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64 *Id.* ¶6.

65 *Id.* ¶¶7-8. Although in many off-road communities, providers other than GCI or Alaska Communications provide BDS, those tend to be small ILECs providing service in very limited geographic areas – sometimes a single Bush village. GCI, in contrast, operates a comprehensive statewide network that is necessary not only for its own BDS operations but to link those small ILECs' networks to any and all outside points – without which their BDS offerings would be worthless.

66 Blessing Declaration ¶¶6-7. Indeed, even in the Lower 48 states, the Rural Wireless Association observes that backhaul to remote communities tends to be excessively priced and an impediment to broadband availability. Comments of Rural Wireless Ass'n in WC Docket Nos. 16-143 *et al.,* 2-4 (filed June 28, 2016).

Alaska Communications cannot provide an affordable end-user service if it pays GCI's charges for wholesale access to the middle-mile infrastructure serving those four communities.

GCI is the Alaska cable television operator and local and long-haul telecommunications carrier with the most extensive network of satellite, microwave and fiber-based middle-mile facilities across the state; as such, GCI controls all of the terrestrial middle-mile facilities reaching 72 of the state's 188 Bush communities.[67] Most of the Bush is limited to satellite backhaul.[68] Without public funding, deployment of terrestrial middle-mile infrastructure has been and will remain cost-prohibitive. As a result, the middle-mile bottleneck severely constrains the availability of broadband and other advanced services, as well as competitive entry, in the Bush.[69]

The prices charged by GCI for competitive access to its TERRA-SW middle-mile network linking dozens of Bush communities confirms the conclusion that GCI is exercising market power in the Bush.[70] GCI asks $9,500 per Mbps per month for an Ethernet connection on TERRA-SW.[71] (That price may be lowered for customers that agree to volume and term discounts that range up to competition-killing *25-year* contract for at least 400 Mbps.)[72]

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67 *See* GCI website at: https://www.gci.com/~/media/files/gci/regulatory/tariffs/gci_terra_posting_effective_07_29_15_final.pdf?la=en

68 Blessing Declaration ¶ 15.

69 Blessing Declaration ¶ 9. As Mr. Blessing observes, satellite backhaul poses serious problems for broadband performance in terms of capacity, latency, and reliability. *Id.* ¶15.

70 Blessing Declaration ¶6 ("For those off the road system the level of competition declines dramatically and a single provider clearly is dominant").

71 Blessing Declaration ¶ 16 & n. 30 (based on hub port charge of $1,000 and edge port charge of $8,500).

72 *Id*.

Federal support data available from the Universal Service Administrative Company ("USAC") similarly reveal that GCI dominates the contracts in rural Alaska for E-rate and RHC-supported broadband services, but especially so in the Bush. In off-road areas, GCI garners about 85 percent of all RHC and E-rate support. In contrast, Alaska Communications wins just three percent, and the other ILECs a combined total of twelve percent.[73] In the areas of the Bush served by GCI's TERRA-SW middle-mile network, GCI's share of RHC and E-Rate support is even higher – a whopping 90 percent, with other carriers sharing the remaining ten percent of the support (Alaska Communications receives zero).[74] Clearly, GCI enjoys a unique market position in Bush Alaska. Only regulation of GCI middle-mile rates in the Alaska Bush (or funding a competitive alternative)[75] will address this bottleneck.

The Commission over-generalizes when it assumes that the ILEC always will be the largest provider in a market, or the provider with market power in a non-competitive market.[76] In Alaska, it is the cable operator, GCI, that is the largest provider in the state and the dominant provider in the vast majority of local markets; and in those locations where one entity possesses

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[73] Blessing Declaration ¶ 18. Isolating the service footprint of Alaska Communications, GCI still commands 68 percent of the support in the off-road areas, Alaska Communications just 16 percent, and third-party competitors another 16 percent. *Id.* ¶ 19.

[74] Blessing Declaration ¶ 20.

[75] Alaska Communications has proposed that the Commission direct funds to a single middle-mile network to be operated on a competitively neutral basis so that all carriers could provide BDS and other broadband services in the Bush. *Connect America Fund*, WC Docket No. 10-90, *Ex parte* Letter from Karen Brinkmann, Counsel for Alaska Communications, to Marlene H. Dortch, Secretary, FCC (filed Nov. 19, 2015), Attachment: "Closing the Middle Mile Gap In Alaska: A Proposed Plan of Action for All of Alaska." To date, the Commission has not acted on this proposal.

[76] *See, e.g.,* Tariff Investigation Order para. 2.

market power, that entity is GCI, not the ILEC.[77] The reason is the middle-mile deficit in Bush communities. Bush locations are unique among Alaska communities for their lack of competition for BDS and other broadband-based services, not because the ILEC possesses market power, but because of the lack of affordable middle-mile infrastructure creating a bottleneck that requires regulation.[78]

The lack of attention to the Alaska market in the record in this proceeding is significant. None of the comments that support Commission regulation of BDS in general mention Alaska as a market in need of regulation.[79] Only the comments of Alaska Communications have identified a market failure in Alaska, and that is in the Bush, where customers lack access to competitive alternatives because of inadequate middle-mile infrastructure.

Thus, to the extent regulation is justified in Alaska, it is justified only in the Bush, to address a genuine bottleneck controlled by an entity with real market power. In the rest of Alaska, competition already is effectively regulating prices and promoting output, as any good regulator would hope, rendering interference with the market unnecessary and undesirable.

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[77] Blessing Declaration ¶ 8 ("control of bottleneck facilities does not lie with the [ILECs] nor is the largest ILEC the largest communications provider in the state. Instead, the dominant provider in Alaska is an IXC/cable company which controls the only terrestrial middle mile facilities in the Alaska Bush"). *Id.* ¶¶ 17-24 (demonstrating little competition for federal universal service support in areas off the road system, in contrast to areas on the road system where competition is robust).

[78] *See* Blessing Declaration ¶ 6 ("In the major population centers there are multiple middle mile providers but in the Alaska Bush, defined as areas that are off the state's road system rail belt, electric grid and without connection via undersea fiber optic cable, there is no more than one").

[79] Commenters that are intensely critical of ILEC practices in other states, including Windstream and Sprint, raise no concerns about Alaska *per se*. They merely make blanket assertions about the state of competition nationwide. *See, e.g.,* Comments of Sprint, Comments of Windstream, *supra,* note 58. Such comments ignore the presence of actual competition throughout non-Bush Alaska using fiber, cable and wireless technologies.

III. In A Market That Is Deemed Non-Competitive, the Record Supports Regulating Only One Provider -- The Dominant Entity

The Commission ought to regulate only one entity in any geographic area deemed "non-competitive," and that entity should be the one that has the ability to dominate the market. In Alaska, that means regulating GCI, particularly in the Bush. Where the ILEC is price-cap regulated it already is price-constrained; its customers are protected by a host of FCC regulations. It is GCI, however, with its control of the middle-mile bottleneck, that has the market power, and ought to be constrained by regulation.

Alaska Communications has documented the extent of the middle-mile deficit in Bush Alaska. Bush locations are typically uneconomic to serve without substantial amounts of federal support. Fewer customers in the Bush support at most two or three competitors.

However, there is one entity with extensive federally-subsidized facilities throughout the state, even in the Bush. That entity, GCI, has boasted at least since 2014 that it owns and operates the largest terrestrial broadband network in the state.[80] It touts its many types of high-speed data service offerings, including business offerings with service level guarantees, managed

[80] *See* "Juneau School District RFP 2014 – TS Telecommunication Services," (Dec. 5, 2014) at 4 ("GCI owns and operates the largest, most diverse redundant fiber network in Alaska and down to the lower 48. In addition, GCI owns and operates facilities to more than 220 points of presence (POPs) throughout Alaska. Our network consists of Layer 1, 2, and 3 platforms, utilizing fiber, copper, and satellite mediums. GCI's AdvantageIP MPLS VPN includes a commercial Service Level Agreement (SLA) that guarantees 99.95% uptime. With more individual GCI employees living in Juneau than any other telecommunication provider in Alaska, GCI has the feet on the street necessary to rapidly respond to any problem that may occur") ("Juneau 2014 School District Proposal"); s*ee also* GCI, "A Proposal Offered to Juneau School District in Response to RFP 2016-TS Telecommunication Services," (Jan. 20, 2016) at 1 (GCI is "the largest provider of Internet and networking services in Alaska" and "the largest education service provider"); *id.* at 10 ("Of Alaska's 20 largest school districts and 100 libraries, all with varying requirements and connectivity services available to them, GCI SchoolAccess installed connectivity services to 17 school districts and 69 libraries").

IP, security, redundancy, and variable bandwidths.[81] As of 2013, GCI boasted that its video-conferencing network was "the largest in Alaska."[82] It states that among its 50 largest enterprise customers GCI has an average tenure of 15.78 years.[83]

Alaska stands in contrast to the markets described in the Further Notice where the dominant provider typically is the ILEC. Alaska Communications neither agrees nor disagrees with that assumption as it pertains to the rest of the country, but it does not hold true in Alaska. In Alaska, in those locations where there is not effective competition – namely, in the Bush – the "dominant" provider almost always is the cable system operator, which controls not only the most extensive network of fiber facilities in the state[84] but also state-wide middle mile capacity that other service providers cannot access.

Upon finding that a dominant provider has erected barriers to entry in the Alaska Bush, the Commission should appropriately regulate that entity. This means evaluating the rates and terms on which middle-mile capacity is made available and comparing them to some reliable measure of "market price." For example, the use of a forward-looking model to establish a rate cap would constrain rates to a level expected of an efficient provider; alternatively, a cost showing could be used to establish reasonable baseline rates. It does not mean the Commission should regulate every point-to-point route as a separate "market." Such a system would be administratively unworkable, as Professor Farrell states.[85] Certainly, it would not make sense in

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81 *E.g.,* GCI 2013 Form10-K at 18-20.

82 *Id.* at 21.

83 GCI Response, "State of Alaska RFP #2015-0200-2583 Core Telecommunications Services," July 16, 2014 (Attachment C – Service Plan) at 5.

84 *See* GCI 2014 Juneau School District Proposal, *supra*, note 80.

85 Comcast Comments, Joseph Farrell Declaration, pp.19-22 *et seq*.

the case of Bush communities in Alaska.[86] It does mean that the Commission should find a way to regulate prices on fiber-based middle-mile capacity in the Bush until barriers to entry are removed.

Sprint's proposals to regulate wholesale and retail BDS as separate "markets" and impose mandatory discounts on wholesale prices,[87] besides having no foundation in the Communications Act, make no sense for Alaska. Historically, the Commission has required regulated telecommunications services to be priced on a non-discriminatory basis regardless of the customer's purpose in purchasing them (including whether or not for wholesale use). In general, where an entity controls essential bottleneck facilities, it has the capability to exercise market power at the wholesale level as well as at the retail level. In Alaska, GCI's control of the wholesale middle-mile capacity input affects both wholesale and retail service competition.[88] It is only GCI that can provide high-speed broadband to far more census blocks than any other provider, has the most extensive fiber network, has the largest market capitalization, earns the most revenue, *and* receives the greatest amount of federal support for broadband connections to the Bush.[89] GCI possesses market power because of its unique stranglehold on middle-mile facilities. The Commission should declare middle-mile transport to the Bush a separate "market" from other BDS offerings, and regulate the dominant provider, GCI, accordingly.

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[86] GCI uses a postalized rate system for TERRA-SW – all rates are the same regardless of destination. See note 67, *supra*.

[87] Sprint Comments at 71.

[88] *See* Blessing Declaration ¶7.

[89] *See* Blessing Declaration ¶¶10-12 *et seq*.

IV. Conclusion

For the foregoing reasons, the Commission should not impose price regulation on BDS offered in Alaska Communications' Anchorage, Fairbanks, and Juneau service areas nor its competitive rural areas; rather, the Commission should impose targeted regulation on the largest provider in Alaska, GCI, and only GCI, because GCI operates bottleneck middle-mile facilities to the Bush, without access to which BDS cannot be competitively provided to those communities.

Respectfully submitted,

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